
(2017) 06 BOM CK 0175
In the Bombay High Court
Case No : 725 of 2008

Khatijabi w/o Haji Iqbal

APPELLANT

Vs

Shahbaz Khan s/o Wahab Khan, & Ors.

RESPONDENT

Date of Decision : 20-06-2017

Acts Referred:

Citation : (2017) 06 BOM CK 0175

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : C. A. Joshi, Anita Singh Mategaonkar, Sachin Zoting

Final Decision : Dismissed

Judgement

1. This appeal is preferred by the original claimant against judgment and award dated 10/04/2008, passed by the MACT, Akola in MACP No.53/2002, being dissatisfied with the meagre amount of compensation awarded therein. Brief facts of the appeal can be stated as follows :

The appellant in the case is a house wife. On 06/08/2001 while she was travelling in the auto rickshaw, auto rickshaw collided with the truck bearing No.MH-31/ W-5950. In the said accident, she suffered injuries to her hand, neck , shoulder and other parts of the body. For a couple of days therefore she was admitted as indoor patient and was required to spend amount of Rs.10,000/ towards medical treatment. It was found that, she suffered injuries of compound fracture of middle phalanges of 3rd and 4th finger with fracture clavicle right with fracture ulna lower 1/4th. According to her, due to said injuries she has suffered 5% permanent disability and it has effect on the longevity of her life. She has also suffered and is still suffering mental agonies, worries etc. and hence she claimed the compensation of Rs.1,50,000/from the respondent Nos.1 to 3 who are owner, driver and insurer respectively of the offending truck.

2. The petition proceeded exparte against respondent Nos.1 and 2. Respondent No.3insurer, however disputed the claim of the appellant. Respondent Nos.4 and

5 driver and owner respectively, of the auto rickshaw did not contest the petition by filing written statement and hence petition proceeded exparte against them. Respondent No.6 initially admitted that auto rickshaw was insured with it but subsequently receded from the said statement.

3. On the respective pleadings of the parties, the Tribunal framed necessary issues for its consideration. In support of her claim the appellant examined herself and also led evidence of the doctor who had examined and treated her and also of the doctor who issued her the disability certificate.

4. On appreciation of the evidence on record, the Tribunal was pleased to hold that the cause of accident was rash and negligent driving of the offending truck and accordingly held respondent Nos.1 to 3 jointly and severally liable to pay the compensation of Rs.40,000/with interest at the rate of 8% p.a. from the date of application till realization of amount to the appellant.

5. This finding of the Tribunal is not challenged by respondent Nos.1 to 3 either by preferring counter appeal or by filing any crossobjection. Hence that finding has become final and does not call for any interference.

6. The only question raised for consideration in this appeal by the original claimant is about the amount of compensation. According to the appellant, the compensation awarded by the Tribunal is meagre and it was granted, without taking into consideration 5% permanent disability suffered by the appellant in the said accident. Whereas according to learned counsel for respondent No.3, the appellant has failed to prove the 5% permanent disability. It is submitted that appellant has not produced on record the certificate about permanent disability from the Medical Board or from the doctor who is member of that Board. Secondly, it is submitted that whatever disability suffered by the appellant, is of such a slight nature that appellant is not liable to get any amount of compensation on that count, especially considering that at the time of accident she was aged about 60 years and not doing any business or work. It is submitted that Tribunal has considered all these aspects and has granted compensation of Rs.30,000/ towards the injuries suffered by her. Moreover, Tribunal has also awarded Rs.10,000/towards medical expenses incurred by her. Thus total amount of compensation to the tune of Rs.40,000/came be awarded. The said amount being just and reasonable, according to learned counsel for respondent No.3, no interference is warranted therein.

7. In this case, as per evidence on record, it can be seen that in support of her case, the appellant has examined herself and the two doctors who treated her for the injuries suffered by her in the accident and issued certificate of permanent disability. The material evidence is of PW2 Dr Raheman Khan. According to him, the appellant has suffered injuries of compound fracture clavicle right with fracture ulna lower 1/4th to the fingers. He performed surgery on her for the fracture. It is his evidence that appellant was admitted from 07/08/2001 till 10/08/2001 in the hospital. He has issued the certificate to that effect which is

Exhibit52 on record. It is his evidence that the appellant had to spend between Rs.8000/to 10,000/towards her treatment. He has not stated anything about the disability alleged to be suffered by the appellant. According to him, the injuries were not such as to render them completely cured after treatment. In his opinion, some stiffness in the fingers would persist. However the appellant had not come to him for follow up treatment, after her discharge and hence he could not say anything about the treatment which she might have taken after discharge from his hospital. According to his further evidence he might have advised the appellant for physiotherapy.

8. Appellant has then examined Dr Hemant Joshi, the Orthopedic Surgeon who had issued the disability certificate vide Exhibit51. He has admitted that he had not treated the appellant at any earlier stage than before issuing such certificate. However he had examined the case papers and found on clinical examination that the disability was on account of restriction to the movements of hand and he has therefore issued disability certificate to the extent of 5%. In crossexamination he has further admitted that he was not the panel member of the Board of Doctors who are Government Authorities, to issue such certificate. He has further admitted that he maintains outward and inward registers in the hospital; however on the disability certificate Exhibit51, the outward number is not mentioned. He has admitted that there are no identification details mentioned in the said certificate. Witness No.2 Dr Rehman Khan has also admitted in his crossexamination that there is a board established for certifying permanent disability; such medical board is chaired by the Civil Surgeon and two other surgeons. Admittedly in this case the appellant has not obtained the disability certificate from the Medical Board. She admitted she did not go before the Medical Board for getting the certificate.

9. Thus in this case whatever disability certificate, which is produced by the appellant, has not been issued by the Medical Board or the doctor from the panel of the Medical Board. The disability alleged to be sustained by her is only to the extent of 5% and that too on the basis of the certificate which is not issued by Dr Rehman Khan, who had treated her but by some other doctor namely Shri Joshi who had not treated her. In such circumstances, reliance cannot be placed on the disability certificate in any way for calculating the compensation towards the alleged permanent disability.

10. Learned counsel for respondent No.2Insurance Company has placed reliance on the judgment of Andhra Pradesh High Court in Doobasi Styavathi vs. Hari Gopal Lunani and anr. III (2007) ACC 500 wherein it was observed that the disability certificate issued by Orthopedic Surgeon without taking any xray and by the doctor who was not a member of the panel and not countersigned either by the panel doctor or medical superintendent, can not be accepted and the Tribunal has rightly refused to accept such disability certificate.

11. Needless to state that in the case in hand disability is also negligible as 5% and the certificate is not issued by the doctor who had treated the appellant or

by the doctor who was on the panel of the Medical Board or by the Medical Board. Hence significance cannot be given to such disability certificate. Appellant has not explained what was the reasons for her not to get such disability certificate from Dr Khan, who had treated her or from the Medical Board or its panel member. Dr Khan has not stated that on account of injuries sustained in the accident, permanent disability of 5% was suffered by the appellant. He has only deposed about appellant having some stiffness to her fingers due to the injuries caused to her in the accident. In my considered opinion, therefore, the Tribunal has rightly considered all these aspects and held the appellant entitled only for compensation on account of the overall sufferings and pain suffered by the appellant and awarded compensation of Rs.30,000/towards that head.

12. As regards the authorities on which learned counsel for the appellant has relied upon, it has been stated that these authorities need to be distinguished on facts, i.e. in case of *Mejabeen Rafiq Chamdiya Ahmednagar vs. Lata Ashok Hiwale* and anr. 2009(5) Mh.L.J.806 the claimant was house wife, who had suffered disability to the extent of 30% and it was brought on record that she was required to engage services of the domestic help to perform multifarious duties of an housewife. Hence, considering her age and the extent of her disability to 30%, it was held that she should be awarded some amount towards the services rendered by her and which she was unable to do now. As against it, in the present case, appellant has failed to prove there was permanent disability and that too to the extent of 5% and on account of it she had to engage any other person to assist her.

13. In the next authority relied upon by learned counsel for the appellant in the case of *Laxman Alias Laxman Mourya vs. Divisional Manager, Oriental Insurance Company Ltd.* And anr. (2011) 10 SCC 756, again the claimant has suffered 38% permanent disability, on account of which, his working capacity was rendered to zero and hence amount of compensation was awarded towards the loss of his earnings and loss of future expenses etc.

14. In the instant case as stated above, there is no question of appellant suffering any loss of earning or incurring any expenses for engaging services of any person to assist her in the household work. The appellant has failed to prove, even her permanent disability to 5% by producing certificate from the doctor who has treated her or from the doctor who is member on the panel of Medical Board. In such situation, the appellant can be entitled only to the compensation for the pain, suffering and inconvenience which she may have in discharging her daytoday duties. Therefore compensation of amount of Rs.40,000/awarded by the Tribunal can not be called as meagre under the said head.

15. In the next authority of *Rajkumar vs. Ajya Kumar* and anr. 2010 CJ (SC) 1201, the permanent disability suffered was to the extent of 45% and it was properly proved. The said disability was of fracture to both bones of left leg and left radius. In view thereof, the compensation amount was granted towards the

loss of further earnings. In the instant case, at the cost of repetition, it has to be stated that not only the appellant has failed to prove her permanent disability to the extent of 5% but whatever disability she had succeeded in proving also cannot be called as arising out of injuries sustained in the accident. Dr Khan, who has treated her, has stated in his cross-examination that the appellant had fracture to the finger of her hand. According to him the only disability was stiffness in finger. Having regard to her age at the time of accident which was 50 years, it cannot be said that the said disability if it is to be called so, was only on account of injuries suffered by her in the accident. There is no evidence to show that she is unable to live her normal life or has to take assistance of any other person to discharge her day-to-day duties.

16. Hence, taking over all view of the matter, this Court does not find any reason to interfere in the compensation amount, which is awarded by the Tribunal to the tune of Rs.40,000/including the amount of Rs.10,000/towards medical expenses, though actually the appellant has produced medical bills of Rs.5986/only. Thus amount of compensation as awarded by the Tribunal to the tune of Rs.40,000/being just, fair and reasonable one, no interference is warranted so as to enhance the same. The appeal therefore holds no merits and accordingly dismissed with no order as to costs.